

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY DALE ROBINSON,

Defendant-Appellant.

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UNPUBLISHED  
February 28, 2006

No. 255672  
Wayne Circuit Court  
LC No. 02-003444-01

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the sentence imposed following his nolo contendere plea to a probation violation. He originally pleaded nolo contendere to unarmed robbery, MCL 750.530, and unlawfully driving away an automobile, MCL 750.413. In exchange, initial charges of armed robbery and carjacking were dismissed. Defendant agreed to spend any time incarcerated at the county jail. The agreement also contained a statement that the sentencing guidelines were to be scored at ten to seventeen months. Defendant was sentenced to a three-year term of probation, with the first year to be served in jail. Following defendant's second probation violation, he was sentenced to forty-eight months to fifteen years in prison on his original conviction. Defendant challenges this sentence. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant maintains that during resentencing, the trial court was required to use the guidelines to which he initially agreed, and to sentence him within those guidelines. He contends that, had the trial court decided not to honor this agreement, he would have had a right to withdraw his plea. *People v Killebrew*, 416 Mich 189, 209-210; 330 NW2d 834 (1982). In support of his claim that the trial court was likewise bound during resentencing, defendant argues that a probation violation is not a separate felony but rather simply permits a resentencing on the original offense. *People v Hendrick*, 472 Mich 555, 562; 697 NW2d 511 (2005).

We disagree. Defendant disregards much of the *Hendrick* Court's discussion concerning a trial court's decision following a probation violation. In deciding that a trial court was free to use postprobation factors in arriving at a sentence after a probation violation, the *Hendrick* Court noted that the language in MCL 771.4 is permissive:

The sentence at issue in MCL 771.4 is clearly permissive, not mandatory. It states that "if" probation is revoked, the court "may" sentence the defendant as

if probation had never been granted. While the sentencing court may sentence the probationer in the same manner and to the same penalty, nothing in the statute requires it to do so. In fact, the statute places an affirmative obligation on the trial court to take only two actions--to provide the probationer with a written copy of the charges constituting the probation violation and to conduct a probation revocation hearing.

Thus, the court may continue, extend, or revoke probation. In the event that the court revokes a defendant's probation, it may sentence the defendant "in the same manner and to the same penalty as the court might have done if the probation order had never been made." A judge, however, is not required to sentence the defendant "in the same manner." [*Hendrick, supra* at 561-562.]

The *Hendrick* Court further noted that the question of whether a probation violation was a separate offense is an issue different from the authority of the trial court to impose sentence upon a violation of probation. *Id.* at 563 n 9. The *Hendrick* Court held, however, that a trial court when imposing sentence after revoking probation must still comply with MCL 769.34:

A trial court has broad latitude in deciding whether to revoke probation. It has less latitude in imposing a sentence in excess of the guidelines. The sentencing court must always follow the requirements set forth in MCL 769.34, as interpreted in *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003). [*Hendrick, supra* at 563.]

A trial court is permitted to "depart from the appropriate sentence range established under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure." MCL 769.34(3).

In the instant case, defendant received the benefit of his bargain at his initial sentencing. During resentencing, the trial court had the option of continuing probation or sentencing defendant on the initial offense. Because the trial court decided to revoke defendant's probation after he violated its terms, the court was required to abide by MCL 769.34(2) by imposing a sentence within the appropriate sentence range established under the sentencing guidelines unless it chose to depart from them after providing sufficient rationale pursuant to MCL 769.34(3). *Hendrick, supra* at 563. Here, neither party seriously disputes the fact that "the appropriate sentence range established under the sentencing guidelines" for defendant's unarmed robbery was twenty-nine to fifty-seven months. The trial court sentenced defendant within these guidelines. Accordingly, the trial court's misunderstanding of the law was harmless; resentencing is not required. MCL 769.34(10); *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005).

We affirm.

/s/ Jessica R. Cooper  
/s/ Kathleen Jansen  
/s/ Jane E. Markey